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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 25th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Wednesday, 8 July 1998, at 10 a.m.

Chairman: Mr. P. KIRSCH (Canada)

CONTENTS

Agenda item		*Paragraphs*
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1997 (*continued*)	1-80
	Message from the Secretary-General	81

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The meeting was called to order at 10.25 a.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.53)

Part 2 of the draft Statute (*continued*)

Discussion paper prepared by the Bureau

1. **The CHAIRMAN** drew delegations' attention to a discussion paper (A/CONF.183/C.1/L.53), prepared by the Bureau to facilitate the Committee's consideration of Part 2.

2. He proposed that the debate should be divided into two parts, the first bearing on crimes (article 5), and the second on other jurisdictional issues, admissibility and applicable law. It would be particularly useful if delegations would comment on the following issues: (i) an approach to the crime of aggression that might form the basis of general agreement; (ii) an approach to the treaty crimes, namely terrorism, drug trafficking and crimes against United Nations and associated personnel; (iii) the need for a threshold for war crimes; (iv) a generally acceptable approach to weapons of a nature to cause superfluous injury or unnecessary suffering; (v) sections C and D on armed conflict not of an international character, including the need for those sections and, if they were included, the threshold for those provisions; (vi) the need for an appropriate provision on elements of crimes to be elaborated after the Rome Conference.

3. On other jurisdictional issues, admissibility and applicable law (articles 6 to 20), the Bureau would appreciate comments on the following: (i) acceptance of jurisdiction—automatic jurisdiction, opt-in or State consent for one or more core crimes; (ii) which States should be parties to the Statute or have accepted jurisdiction before the Court exercised such jurisdiction; (iii) the *proprio motu* power of the Prosecutor to initiate proceedings and the safeguards that would be required; (iv) the role of the Security Council on issues other than aggression. Delegations were of course free to comment on any other issues relating to Part 2.

Article 5

4. **Mr. van HEBEL** (Netherlands), Coordinator, said that the first major issue in connection with article 5 was whether the crime of aggression should be included within the jurisdiction of the Court. If no general agreement could be secured on the definition of that crime, there was an option to exclude it. The second issue was the inclusion of treaty crimes. With regard to genocide and crimes against humanity, the definition of the former had caused no problems and was indeed exactly the same as the one in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. With regard to crimes against humanity, a compromise text had now received wide support. On war crimes, there were three options relating to the thresholds. Option 1 provided that the Court should have jurisdiction over war crimes only when committed as part of a plan or policy, or as part of a large-scale commission of such crimes. Option 2 was almost the same but with the word "only" replaced by "in particular". Option 3 was for no such provision to be included. In earlier discussions, option 2 had been favoured by most delegations as a compromise solution.

5. The definition of war crimes consisted of four sections, A to D. Section A, grave breaches of the Geneva Conventions of 1949, had not caused serious problems. There were a few outstanding issues requiring clarification

in section B, dealing with other serious violations of the laws and customs applicable in international armed conflict. In paragraph (o), dealing with weapons, there were three options, the first providing for a short list of weapons of a nature to cause superfluous injury or unnecessary suffering, with a provision (subparagraph (vi)) to allow further expansion of the list in the future in accordance with a procedure to be laid down. Further consultation might be held on the wording of that provision. Option 2 contained the same list plus three other elements: nuclear weapons, anti-personnel mines and blinding laser weapons. Subparagraph (ix) of that option provided for the possibility of further expansion of the list.

6. Option 3 took a different approach, since it did not give a list of weapons but simply stated that certain weapons should be considered prohibited. Paragraphs (p *bis*) (crimes of a sexual nature), (r *bis*) (United Nations personnel) and (t) (participation of children) were still under discussion. Sections C and D were open for further discussion and for each there was an option 2 providing that there would be no such section.

7. Lastly, following article Y there was a comment that read: "Elements of crimes may be elaborated after the Rome Conference by the Preparatory Commission", which had received considerable support. The drafting was subject to further discussion.

8. **Mr. RWELAMIRA** (South Africa), speaking on behalf of the countries of the Southern African Development Community (SADC) on article 5, said that the SADC countries supported the inclusion of the crimes enumerated in (a), (b) and (c) under "Crimes within the jurisdiction of the Court". They also supported inclusion of the crime of aggression, subject to agreement on a definition and a clear spelling out of the Security Council's role. They had no problem with inclusion of the crime of genocide or the definition thereof, and supported the present formulation of the provisions on crimes against humanity and the wording of the *chapeau* to those provisions.

9. With regard to war crimes, option 1 set too high a threshold; the SADC countries therefore supported option 2. With regard to paragraph (o), in the interests of compromise they would be prepared to support option 1 on the understanding that it included subparagraph (vi), which allowed for the possibility of including other weapons at a later stage.

10. Most atrocities were now committed in the context of internal armed conflicts. SADC therefore supported inclusion of sections C and D in the Statute, although a compromise provision containing elements of both sections might also be acceptable.

11. With regard to the crime of aggression, option 1 provided a good starting point for an acceptable definition, but it should also take account of contemporary forms of aggression, particularly the elements set out in General Assembly resolution 3314 (XXIX).

12. The SADC countries had a flexible attitude with regard to the inclusion of treaty crimes: drug crimes and crimes against United Nations personnel represented major challenges and might usefully be reflected in the Statute. While attracted to the idea of including the elements of crimes, they wished to know whether the elements would form an integral part of the Statute, whether they would be elaborated in the Preparatory Commission, and what would be the influence of States in that process.

13. **Mr. HAFNER** (Austria), speaking on behalf of the member States of the European Union, said that the European Union considered that the Court should be an independent institution with jurisdiction over the core crimes of genocide, crimes against humanity and war crimes. Aggression should also come within the Court's jurisdiction if properly defined.

14. The European Union considered that as internal conflict was now so widespread, the Court's jurisdiction should extend to crimes committed in internal as well as international armed conflict. Moreover, the Court should be complementary to national processes when national systems were unable or unwilling to investigate or prosecute. The Security Council should be able to refer to the Court situations in which crimes within the Court's jurisdiction might be committed.

15. **Mr. MACKAY** (New Zealand) said that his delegation wished the crime of aggression to be included under the Court's jurisdiction, but that in view of the difficulties of definition it might be necessary to maintain the status quo, whereby aggression was ultimately determined by the Security Council.

16. New Zealand was in favour of the inclusion of treaty crimes, but, because of its complexity, that question might have to be left to the review conference provided for in the Statute. There was no need for a threshold for war crimes since international law was already clear and any threshold adopted might limit the existing rules. Option 1 was unacceptable to his delegation because its *chapeau* would rule out application of the Statute to situations in which it was desirable that it should apply. In view of the concerns expressed by other delegations, option 2 was probably the best way forward, although not the one preferred by his own delegation.

17. With regard to the approach to weapons of a nature to cause superfluous injury, New Zealand supported option 3, which had the merit of avoiding a precise listing and had stood the test of time. His delegation also proposed that the reference to "bullets which expand or flatten easily", in subparagraph (iii) of options 1 and 2, should be amended to read "bullets which expand, explode or flatten easily".

18. He again drew the Committee's attention to New Zealand's proposal, contained in document A/CONF.183/C.1/L.40, to delete the word "overall" from paragraph (b) of section B, an issue which he hoped would be taken up at a later stage.

19. As to whether armed conflicts not of an international character should be covered by the Statute, failure to include such conflicts would leave a huge gap that would be quite unacceptable to the international community. However, further discussion was needed with delegations that were concerned about the application of that provision.

20. His delegation was not entirely convinced of the need for including elements of crimes, but did not rule out that possibility, provided it did not delay the entry into force of the Statute.

21. **Mr. ONKELINX** (Belgium) said that his delegation hoped that the crime of aggression would be included within the jurisdiction of the Court. Belgium was in favour of option 1, but would like military occupation and annexation of territory not to be the only objectives referred to in the definition of aggression.

22. While his delegation was greatly interested in including treaty crimes, that was a complex issue on which it would be very difficult to reach a conclusion at the present Conference. The matter might be reflected in the Final Act in the hope that it could be included in a subsequent revision of the Statute. His delegation did not consider that terrorism and economic embargoes had a place among crimes against humanity as currently defined in international law.

23. With regard to the threshold for war crimes, Belgium had always favoured option 3, but with a view to achieving a compromise would be prepared to accept option 2. With regard to weapons, his delegation's preference was for option 3 because it was the one most consistent with the texts of humanitarian law conventions. However,

if there was a large majority in favour of specifically enumerating prohibited weapons, it could accept option 1 provided the whole of option 3, and in particular the words "inherently indiscriminate", were included in the *chapeau*.

24. With regard to sections C and D, Belgium, like all the member States of the European Union, was firmly in favour of the recognition of the Court's jurisdiction over war crimes committed in armed conflicts not of an international character.

25. Article Y should also be reflected in the Statute. However, further discussion was needed with regard to elements of crimes.

26. **Mr. OWADA** (Japan) stressed the need for flexibility in order to achieve consensus. The Statute had to be drafted so as to provide satisfactory coordination between existing national judicial systems and the Court's international mechanism. A strictly purist approach would merely produce an unworkable Statute.

27. On crimes against humanity, his delegation had been in favour of the words "widespread and systematic attack" in the *chapeau* of paragraph 1, but since many delegations preferred "widespread or systematic attack", as in the 1995 Code of Crimes against the Peace and Security of Mankind, and since paragraph 2 provided some clarification, his delegation would adopt a flexible attitude on that point. Japan supported the inclusion of paragraph (g) on rape or other crimes of sexual violence, and hoped that the matter would be satisfactorily resolved. His delegation was not in favour of including terrorism and economic embargoes under crimes against humanity.

28. With regard to war crimes, his delegation considered that a threshold was important, since crimes under the Court's jurisdiction had to be distinguished from more general categories of crime. His delegation was therefore in favour of option 1, but would be prepared to consider option 2 if the majority so desired.

29. With regard to weapons (paragraph (o)), he said that in accordance with the principle of *nullum crimen sine lege* it was important to enumerate the acts to be considered as war crimes and their constituent elements. The approaches in options 1 and 2 were therefore preferable to the more generic approach adopted in option 3.

30. Since international law on the subject was still in the process of development, Japan was in favour of including provision for a review, as in option 1, subparagraph (vi), and option 2, subparagraph (ix). Any such review would, however, have to be carried out in accordance with the procedures laid down for the revision of the Statute.

31. His delegation was in favour of including paragraphs (p *bis*), (r *bis*) and (t), and urged the Conference to find appropriate wording for those provisions. Japan was also in favour of including sections C and D so that the Statute would apply to armed conflicts not of an international character. It favoured including the crime of aggression on two conditions: first, that a clear definition of the crime was established, and secondly, that there would be no infringement of the Security Council's prerogative under Article 39 of the Charter.

32. On the question of treaty crimes, his delegation considered that, while crimes related to drugs and terrorism were extremely serious, it was essential to intensify cooperation within the framework of the treaties dealing with those issues. If treaty crimes were included within the Court's jurisdiction, they should all be treated on an equal footing. Moreover, if the treaty crimes were assigned to the jurisdiction of the Court, there was a danger that it might become overburdened. Lastly, Japan considered it absolutely essential to include a binding provision on

elements of crimes as an integral part of the Statute; however, work on that issue could continue after the Conference.

33. **Mr. SADI** (Jordan) said that his delegation was in favour of including the crime of aggression in the Statute. It maintained an open mind on the issue of treaty crimes. However, it wished to insist that armed conflicts not of an international character should be included. It favoured option 2 with regard to the threshold for war crimes, and preferred option 2 with respect to weaponry, although it was also prepared to entertain option 1. His delegation maintained an open mind on the question of including the elements of crimes.

34. **Mr. LIU Daqun** (China) said his delegation considered that if agreement could be reached on the definition and on the role of the Security Council in that context, the crime of aggression should be included in the Court's jurisdiction. It could not agree to a selective approach to treaty crimes, which should either all be included or all omitted. His delegation also had some concerns about the provisions concerning crimes against humanity, but was prepared to accept the compromise proposal of Canada.

35. With regard to war crimes his delegation favoured option 1 for the *chapeau*. It was also in favour of option 1 for paragraph (o) under section B. However, it still needed more time to study subparagraph (vi). With regard to paragraph (r *bis*), protection of United Nations personnel, his delegation considered that that matter could not be assimilated to a war crime. Moreover, since peacekeeping personnel could be regarded as combatants and other personnel as civilians, the Statute already covered United Nations personnel and the paragraph could therefore be deleted.

36. His delegation favoured deletion of sections C and D relating to internal armed conflicts, as not being in keeping with international customary law; however, it was open to other suggestions. Specific provision should also be made within the Statute for the elements of crimes, and discussion on that issue could be continued after the Conference.

37. **Mr. MOCHOCHOKO** (Lesotho) said that the African Group supported the inclusion of the core crimes of genocide, crimes against humanity and war crimes in the Statute. It was in favour of including other crimes, in particular aggression, if appropriate definitions could be found and agreement reached on other issues.

38. **Mr. DAUTO JEICHANDE** (Mozambique) said that his delegation supported the inclusion of genocide, crimes against humanity and war crimes as crimes within the Court's jurisdiction. It also favoured inclusion of the crime of aggression in the Statute, although the Security Council also had a role to play in safeguarding peace and security. His delegation supported option 1 in respect of treaty crimes.

39. Mozambique had no problems with the texts on genocide and crimes against humanity. As for war crimes, its preference was for option 2 in the *chapeau*. With regard to section B, paragraph (o), his delegation preferred option 2 as being more inclusive. On sections C and D, his delegation was also in favour of option 1. With regard to aggression it favoured option 1, with the incorporation of elements from General Assembly resolution 3314 (XXIX).

40. **Mr. SALAND** (Sweden) said his delegation was in favour of including the crime of aggression, provided satisfactory definition could be found and the role of the Security Council under the Charter was respected. It was also satisfied with the definition in option 1, but in view of the continued efforts to refine it, felt that option 2 ("no such provision") might have to be adopted for lack of time—an outcome Sweden did not favour. As for treaty crimes, his delegation had serious doubts that it would prove possible to include them at the present juncture.

41. He supported the *chapeau* of the provision on crimes against humanity proposed by the Jordanian delegation. As for the threshold for war crimes, his delegation had always supported option 3 ("no such provision") but could reluctantly agree to option 2 if a consensus existed.

42. With regard to paragraph (o) of section B, his delegation had originally supported the generic approach in option 3, but since clarity was important to many delegations it was willing to work on the basis of option 1. It attached great importance to subparagraph (vi) under that option, in the light of its continued interest in the issue of anti-personnel land mines. Sweden also remained attached to the idea of adding weapons and methods of warfare that were inherently indiscriminate to the requirements set forth in the *chapeau* of option 1.

43. His delegation had grave doubts about the advisability of including elements of crimes in the Statute but was prepared to consider their inclusion as guidelines rather than as absolute provisions.

44. **Mr. CHUKRI** (Syrian Arab Republic) said he considered that the introductory sentence added to article 5 weakened the article and that the wording of the *chapeau* should remain unchanged. With regard to aggression, he was dismayed by the proposal in option 2 to delete that crime, and wondered why no account appeared to have been taken of the definition proposed in document A/CONF.183/C.1/L.37 by his delegation and others.

45. As far as treaty crimes were concerned, his delegation, while condemning the crime of terrorism, believed that it had not been well defined and should therefore be omitted from the Statute. Moreover, drug crimes and crimes against United Nations personnel had no place in a statute dealing with international crimes.

46. With regard to crimes against humanity, his delegation would prefer the wording "widespread and systematic attack", but was prepared to accept the wording "widespread or systematic attack". Serious consideration should be given to including economic embargoes under crimes against humanity, for, if protracted, they were tantamount to murder.

47. With regard to the *chapeau* for war crimes, his delegation was in favour of option 3 ("no such provision") but was prepared to accept option 2. As for weapons, his delegation was in favour of option 2, though it did not insist on the inclusion of anti-personnel mines. Options 1 and 3 were totally unacceptable.

48. Option 1 concerning aggression raised the issue of a determination by the Security Council. In that connection, article 6 should be amended so that the Court could exercise jurisdiction if a situation was referred to the Prosecutor by the Security Council or by the General Assembly. Alternatively, where, following exercise of the right of veto, the Security Council failed to make a determination of aggression, the Court should be free to exercise its jurisdiction upon the complaint of a State.

49. He considered that the issue of elements of crimes was too complex to be included. Referring to article 20 (Applicable law), he said that there was no such concept as "general international law". The correct wording should probably be "international customary law". Lastly, although his delegation was opposed to including sections C and D, which extended the Court's jurisdiction to armed conflict not of an international character, it might be willing to consider section C if certain criteria, such as the total collapse of a country's central regime were included.

50. **Mr. FIFE** (Norway) endorsed the position of the Swedish delegation with regard to the crime of aggression. With regard to treaty crimes, he agreed on the need for a unified approach, although his delegation would have

preferred crimes against United Nations personnel to be included. However, those crimes might be reviewed at a later stage.

51. On the need for a threshold on war crimes, in a spirit of compromise his delegation was prepared to consider option 2. On weaponry, it saw no alternative to option 1. It was not entirely satisfied with subparagraph (vi) but was prepared to discuss it further.

52. His delegation considered it essential to include sections C and D in the Statute, in order to extend the Court's jurisdiction to internal conflicts. It believed that the threshold was already high enough and that the text was clear, but was prepared to discuss the drafting to clarify it even further.

53. As to the provision on elements of crimes, although Norway was basically opposed to its inclusion, a basis for consensus was emerging which his delegation was prepared to join.

54. **Mr. DABOR** (Sierra Leone) said that his delegation supported the inclusion of the crime of genocide, crimes against humanity and war crimes. With regard to the latter it considered that there should be no threshold, but as a compromise was prepared to accept option 2. It would support the inclusion of the crime of aggression if an acceptable definition was agreed upon and the role of the Security Council defined.

55. While appreciating the seriousness of the treaty crimes and their adverse effect on society, his delegation thought that those offences should not be included at present, and it therefore preferred option 2. With regard to paragraph (o) in section B, it could accept either option 1 or option 2. It strongly supported the inclusion of sections C and D since, as was well known, his country was undergoing an internal conflict in which very serious offences had been committed over which the Court should have jurisdiction.

56. His delegation had not been in favour of including elements of crimes in the Statute, but in the light of the discussion in the Working Group on War Crimes its attitude was now flexible. However, if the elements were included his delegation would prefer them not to be of a binding nature but merely to serve as guidelines for the Court. Moreover, any discussions on that provision should be left until after the Statute had been finalized.

57. **Mr. GADYROV** (Azerbaijan) said his delegation strongly supported inclusion of the crime of aggression in the Statute. An appropriate definition could be found if the will existed to do so. Moreover, without prejudice to its role in maintaining international peace and security, the Security Council should not be the only trigger mechanism with respect to the crime of aggression: any State affected by an act constituting aggression should be able to lodge a complaint with the Court.

58. His delegation had no strong position on the inclusion of treaty crimes but wondered whether provision should not be made for other crimes covered by existing or future treaties. It did not feel that a threshold for war crimes was needed but was prepared to work on option 2 in an attempt to secure a compromise. On weapons, it supported option 3 but was prepared to consider other options.

59. His delegation had no problems with including section C and agreed with the representative of Norway regarding the threshold. However, his Government was not prepared to accept section D since it was not a party to the Second Protocol Additional to the Geneva Conventions.

60. His delegation was not opposed to including a definition of elements of crimes, but wondered whether the elements would have the same legal force as other provisions of the Statute or whether they would simply be guidelines for interpretation by judges.

61. His delegation had some concerns about the terminology used in the Statute. Words such as "wilfully", "intentionally" and "knowingly" were used interchangeably, whereas each term should have its own meaning. Problems of interpretation might arise for judges; moreover, there might not be an appropriate translation of all those terms in some languages. Thus, for instance, his delegation was concerned about the use of the word "gender" in paragraph 1 (h) under "Crimes against humanity". Did that provision imply that a conviction by a national court for homosexual acts might be regarded as persecution and thus fall within the jurisdiction of the Court as a crime against humanity? He asked for clarification in that regard.

62. **Ms. CHATOOR** (Trinidad and Tobago) endorsed the remarks of the representative of South Africa but was concerned that the effectiveness of the Court should not be undermined by a high threshold for war crimes. Her delegation's preference would have been for no threshold, but it could accept option 2. Internal armed conflict was currently the most prevalent form of conflict, and it was thus absolutely essential to include sections C and D. Her delegation was also in favour of including all the treaty crimes in the Statute. A separate regime through the opt-in mechanism would assist in that regard.

63. **Mr. GONZALEZ GALVEZ** (Mexico) said it was important that the Statute should not include provisions subordinating the authority of the Court to that of the Security Council, in contravention of article 53 of the Vienna Convention on the Law of Treaties. Mexico had put forward its own proposals in connection with the crime of aggression, but could accept the similar proposals of the representative of the Syrian Arab Republic in that regard. In other words, it could agree to the reference to the Security Council as long as reference was also made to the General Assembly and a paragraph included to the effect that referral of an act of aggression to the Court by the Security Council was pursuant to Article 27 (2) of the Charter, and would thus be considered as a procedural matter to which the right of veto would not apply.

64. With regard to weapons, his delegation was willing to support option 3, the provisions of which would apply to nuclear weapons since they were inherently indiscriminate.

65. With regard to the elements of crimes, Mexico could not agree to sign or ratify the Statute until that provision had been finalized. It was prepared to accept the inclusion of non-international armed conflict in the Statute as long as no reference was made to Protocol II to the 1949 Geneva Conventions, an instrument to which it was not a party. It considered that discussions should continue on the thresholds for crimes against humanity and war crimes, and would be pleased to submit its own proposals if that would advance the Committee's work. Alternatively, those proposals might be taken into account in preparing the new version of document A/CONF.183/C.1/L.53.

66. **Ms. WILMSHURST** (United Kingdom) said that her delegation believed that option 1, which reflected a long process of negotiation in the Preparatory Committee, could form the basis for general agreement on the crime of aggression. If agreement could not be reached on all the elements of option 1, option 2 ("no such provision") was the only realistic alternative.

67. The difficulty with including treaty crimes was not just the complexity of the issue but the fact that many believed that the Court was not the best forum in which to try issues involving terrorism and drug offences. Her delegation could not see a way of including treaty crimes that would command general acceptance. As to the threshold for war crimes, her delegation believed that option 2 was the best way forward.

68. With regard to weaponry, option 1 was closest to her delegation's views, but subparagraph (vi) needed reconsideration since it was tied to the amendment procedures, which were not yet agreed. With regard to the inclusion of non-international conflicts within the jurisdiction of the Court, her Government regarded it as essential that sections C and D should be included in the Statute without any opt-in or opt-out provision, and without the possibility of reservations. Inclusion of elements of crimes could be useful, but they should not hold up the entry into force of the Statute. The elements should be transmitted to the Preparatory Commission for further elaboration.

69. Mr. KAUL (Germany) said that his delegation could agree to the definition of aggression in option 1. With regard to the note in the discussion paper that elements from General Assembly resolution 3314 (XXIX) might be inserted in the definition, he pointed out that important elements from that resolution were already included. At the end of paragraph 1 of option 1, the words "with the object or result of establishing a military occupation of, or annexing, the territory of such other State or part thereof" were based on article 3 (a) of resolution 3314 (XXIX). Moreover, the entire approach underlying option 1 was based on article 5 of resolution 3314 (XXIX), which included the words: "A war of aggression is a crime against international peace". His understanding was that the provisions on aggression referred to wars of aggression, not to single, specific aggressive acts.

70. With regard to option 2 ("no such provision"), he reluctantly conceded that that option might in the end have to be adopted. Attempts to make the definition too broad would simply preclude general agreement, while attempts to ignore the responsibility of the Security Council would also rule out the adoption of option 1. However, his delegation was prepared to persevere with the attempt to find a solution.

71. His delegation's position on treaty crimes was similar to that outlined by the representative of the United Kingdom, but again, his delegation was prepared to work on a compromise. It felt that there was a need for a threshold clause for war crimes and that option 2 might be an appropriate compromise. With regard to the weaponry provision for war crimes, option 1 was essential, as was the inclusion of sections C and D.

72. With regard to elements of crimes, his delegation had carefully studied the United States proposal and considered that their inclusion might be useful, although it was not absolutely necessary. Germany would therefore be pleased to participate in the discussion in a follow-up phase to the Rome Conference. However, failure to reach general agreement on the elements and definitions should not prevent early entry into force of the Statute. Consideration might be given to the possibility of adding definitions and elements in the form of an annex to the Statute in due course.

73. Mr. TAFA (Botswana) said that his delegation favoured the inclusion of genocide, crimes against humanity and war crimes as core crimes in the Statute. Aggression should also be included as a core crime, subject to an acceptable definition being found.

74. With regard to crimes against humanity, his delegation supported the *chapeau* as currently worded. As for war crimes, in principle his delegation considered that there should be no threshold whatsoever, but it was prepared to consider option 2. With regard to weapons, its preference was for option 2, and for inclusion of C and D. It was in favour of including treaty crimes, but since they were all equally important, they must either all be included, or all excluded. If elements of crimes were included, they should take the form of guidelines of a non-binding nature.

75. Ms. PLEJIĆ-MARKOVIĆ (Croatia) endorsed the views of the presidency of the European Union with regard to article 5. Croatia was strongly in favour of including the crime of aggression, as currently defined, in the Statute. It was therefore in favour of option 1. Omission of aggression would send a very dangerous message to

aggressors throughout the world. Her delegation had a flexible attitude with regard to the inclusion of treaty crimes, and found the present definition of genocide acceptable.

76. The solution proposed with regard to crimes against humanity was satisfactory. Croatia was prepared to work with others on the remaining unresolved questions. For war crimes, her delegation was in favour of option 2, with strong emphasis on the words "for the purpose of the present Statute". With regard to weaponry, her delegation was in favour of option 1, although subparagraph (vi) might give rise to problems of interpretation. Croatia was strongly in favour of including sections C and D since internal conflicts were now the rule rather than the exception. Her delegation's position with regard to the inclusion of elements of crimes was still open.

77. **Mr. ROWE** (Australia) said that his delegation acknowledged the importance of the crime of aggression, but agreed that the definition had to be satisfactory and that the role of the Security Council under the Charter must be respected. However, since time was running out, efforts to include aggression in the Statute at the Rome Conference might have to be abandoned. The same applied to treaty crimes. The primary focus must now be on the three core crimes of genocide, crimes against humanity and war crimes.

78. His delegation endorsed the support expressed for the text on crimes against humanity, in particular the words "widespread or systematic" in the *chapeau*. With regard to the need for a threshold for war crimes, Australia had favoured option 3 but in view of the emerging consensus could now support option 2. It was unable to support option 1. In relation to the weapons provision, it had originally favoured the generic provision in option 3, but could now accept option 1 in the light of the strong support expressed for it. It was absolutely essential to include sections C and D in the Statute. Efforts to find an acceptable wording should therefore continue. Lastly, elements of crimes would be of assistance to the Court, but their elaboration must not impede the entry into force of the Statute.

79. **Mr. NDIR** (Senegal) said his delegation agreed with the definitions of genocide and crimes against humanity. It could support the inclusion of the crime of aggression in the Statute, but an acceptable definition had to be found.

80. With regard to treaty crimes, drug-related crimes should be dealt with by the United Nations International Drug Control Programme and should not be included in the crimes covered by the Statute. On weaponry, his delegation was in favour of option 3 for paragraph (o) of section B, but would be ready to accept option 1 as a compromise. Lastly, it was essential that internal conflicts should be included within the jurisdiction of the Court.

MESSAGE FROM THE SECRETARY-GENERAL

81. **Mr. CORELL** (Representative of the Secretary-General) drew attention to a letter from the Secretary-General to the President of the Conference (A/CONF.183/INF.8), expressing his hope that the participating States would find the necessary spirit of cooperation to be able to finalize the Statute on 17 July 1998 with a view to creating a Court that would be strong and independent enough to carry out its task. The Secretary-General reiterated that the overriding interest must be that of the victims and of the international community as a whole. The Court must be an instrument of justice, not expedience. It must be able to protect the weak against the strong, and demonstrate that an international conscience was a reality.

The meeting rose at 1.20 p.m.